HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.696 of 2007

Between:

Harish Chandra Chandak & others

... Appellants

And

V. Govardhan Reddy & others.

... Respondents

Counsel for the appellants: Shri U. Muralidhar Rao

Counsel for respondent Nos.1 & 2: Shri G. Dhananjai

Counsel for respondent No.3: Shri Deepak Bhattacharjee

::JUDGMENT::

September 13, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside the order of the learned Single Judge whereby she allowed Writ Petition No.7593 of 2007 filed by respondent Nos.1 and 2 herein and quashed order dated 28.3.2007 passed by the Recovery Officer, Debts Recovery Tribunal,

Hyderabad (hereinafter referred to as 'the Recovery Officer') recalling the warrant of possession issued on 21.3.2007 in respect of Plot No.11 forming part of Survey Nos.193 to 197, New Dilsukhnagar Colony, Ranga Reddy District (hereinafter referred to as 'the subject land').

The Facts:

1) M/s.Charminar Fine Chemicals, Hyderabad (respondent No.5 herein) availed various financial facilities from Karoor Vysya Bank Limited (for short, 'the bank') in 1983. Shri V. Amruthanandha Sarma was one of the partners of respondent No.5. His wife Smt. Ramadevi (respondent No.8 herein) mortgaged her house property (the subject land) by deposit of title deed for securing repayment of the dues of the bank.

2) After about two years, the bank filed suit, which was registered as O.S.No.1479 of 1985 in the court of III Additional Judge, City Civil Court, Secunderabad for recovery of Rs.5,64,992.65 ps. with future interest @ 16.5% per annum and costs by alleging that the borrower and sureties have failed to repay its dues. Along with the plaint, the bank filed the document of title deposited by respondent No.8, who had been impleaded as defendant No.4 in the suit. The trial court passed preliminary decree dated 15.3.1988 and final decree dated 25.9.1991.

3) After ten years of the passing of preliminary decree and seven years of the passing of final decree, the bank filed an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the 1993 Act') before Debts Recovery Tribunal, Bangalore for issue of a direction to the

respondents to pay the amount in terms of the decrees passed by the civil court. The same was registered as O.A.No.33 of 1998. After its creation, the O.A. was transferred to Hyderabad Bench of the Tribunal and was registered as O.A.No.1343 of 1999. By an order dated 12.4.2002, the Tribunal allowed the O.A. and declared that the bank has been able to make out a case for issue of recovery certificate. Thereafter, recovery certificate dated 26.7.2002 was issued under Section 19 (22) of the 1993 Act for a sum of Rs.22,55,312.65 ps. together with future interest @ 16.5% and the Recovery Officer was directed to realize the amount by sale of hypothecated moveable and immovable properties belonging to defendants (including respondent No.8 herein).

4) After issue of recovery certificate, the bank filed R.P.No.221 of 2002 before the Recovery Officer, who issued proclamation dated 12.12.2002 and fixed the date of auction as 12.6.2003.

5) At that stage, the appellants filed Claim Petition No.35 of 2003 (C.P.No.35 of 2003) before the Recovery Officer and objected to the proposed sale of the subject land by making the following assertions:

i) The subject land had been sold by respondent No.8 to Kishore Kumar Jain by executing an agreement of sale dated 10.2.1984.

ii) That due to failure of respondent No.8 to get the sale-deed registered, Kishore Kumar Jain filed suit for specific performance (O.S.No.248 of 1988) in the court of II Additional Senior Civil Judge, Ranga Reddy District. The same was decreed ex parte on 26.6.1997 and the Presiding

Officer of the Court executed sale-deed dated 19.8.1999 in favour of the plaintiff.

iii) That they i.e. appellant No.1 and his wife Smt.Prema Chandak purchased the subject land from Kishore Kumar Jain vide registered sale-deed dated 15.9.1999. They also executed rectification deed dated 23.8.1999.

iv) That by suppressing all the facts, the bank obtained preliminary and final decrees in O.S.No.1479 of 1989 and order dated 26.7.2002 from the Tribunal.

6) By an order dated 12.6.2003, the Recovery Officer dismissed C.P.No.35 of 2003. He observed that all transactions, including the agreement of sale executed by respondent No.8 in favour of Kishore Kumar Jain, ex parte decree dated 26.6.1997 passed by II Additional Senior Civil Judge, Ranga Reddy District, sale-deed executed by II Additional Senior Civil Judge, Ranga Reddy in favour of Kishore Kumar Jain and the sale-deed executed by the latter in favour of the applicants (the appellants herein) were subject to the mortgage of the scheduled property.

7) The appellants challenged the aforementioned order in Recovery Appeal No.7 of 2003. Initially, the Tribunal stayed all further proceedings relating to sale, but finally dismissed the appeal vide its order dated 13.12.2006.

8) After dismissal of Recovery Appeal No.7 of 2003, the Recovery Officer directed respondent Nos.1 and 2, who had participated in the auction held on 12.6.2003 and gave highest bid, to deposit the balance amount of Rs.13,43,000/-. Respondent Nos.1 and 2 deposited the amount. Thereafter, the Recovery Officer issued

sale certificate in their favour and got the sale registered.

9) Undeterred by two adverse orders, the appellants filed suit in the court of II Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar for grant of a declaration that they are the absolute owners and possessors of the subject land; that their title and possession are legal and valid; that the registered sale-deed and rectification deeds executed by Kishore Kumar Jain are legal and valid and binding on the bank and the auction purchasers; that preliminary and final decrees passed by III Additional Senior Civil Judge, Secunderabd in O.S.No.1479 of 1985 are inexecutable, illegal and barred by limitation; that recovery certificate dated 26.7.2002 issued by the Tribunal and consequential proceedings taken by the Recovery Officer are illegal and unenforceable and that auction conducted on 12.6.2003 is nullity. They also filed I.A.No.2766 of 2006 for stay of all further proceedings in O.A.No.1343 of 1999. By a detailed order dated 12.3.2007, II Additional Senior Civil Judge, Ranga Reddy dismissed the I.A. Another application filed by the appellants, which was registered as I.A.No.141 of 2007 for suspension of sale certificate issued in favour of respondent Nos.1 and 2 was dismissed by II Additional Senior Civil Judge, Ranga Reddy by a separate order passed on 12.3.2007.

10) After dismissal of the interlocutory applications filed by the appellants, the Recovery Officer issued warrant of possession dated 21.3.2007 and also appointed Advocate Commissioner. However, just after six days, he changed his mind and accepted the application filed by the appellants for recall of the warrant of

possession and passed order dated 28.3.2007 on the premise that the suit for declaration (O.S.No.2952 of 2006) filed by them is pending in the court of II Additional Senior Civil Judge, Ranga Reddy District.

11) Respondent Nos.1 and 2 challenged order dated 28.3.2007 in Writ Petition No.7593 of 1997. They pleaded that after dismissal of C.P.No.35 of 2003 by the Recovery Officer, R.A.No.7 of 2003 by the Tribunal and the injunction applications by II Additional Senior Civil Judge, Ranga Reddy, the Recovery Officer did not have the jurisdiction to entertain the application filed by non-petitioner Nos.3 to 6 for recall of warrant.

12) The appellants contested the writ petition. In the counter filed by appellant No.1, detailed reference was made to the agreement of sale executed by respondent No.8 in favour of Kishore Kumar Jain, decree passed in his favour in O.S.No.246 of 1996, sale deed dated 19.8.1999 executed by

II Additional Senior Civil Judge, Ranga Reddy, sale deed and rectification deed executed by Kishore Kumar Jain in favour of appellant No.1 and his wife Smt.Prema Chandak, execution of mortgage by him in respect of the subject land in favour of Chaitanya Cooperative Urban Bank Limited by depositing the title deeds on 16.12.1999, and averred that the proceedings of the suit and O.A. filed by the bank and the decrees and orders passed by the Civil Court and the Tribunal respectively are liable to be ignored. He also relied on Section 281 of the Income Tax Act, 1961 (for short, 'the 1961 Act') and Rule 11 (6) of the Second Schedule appended thereto and pleaded that during the

pendency of O.S.No.2952 of 2006, possession of the disputed land cannot be taken by the writ petitioners. He also accused the writ petitioners of having suppressed the facts relating to the agreement of sale entered into between respondent No.8 and Kishore Kumar Jain.

13) The learned Single Judge briefly adverted to the facts of the case, orders passed by the Recovery Officer, the Tribunal and II Additional Senior Civil Judge, Ranga Reddy and held that the Recovery Officer was not at all justified in entertaining the application filed by respondent Nos.3 to 6 (the appellants herein) for recall of the warrant of possession. She then referred to the relevant provisions of the 1993 Act and 1961 Act and held that once the Recovery Officer rejected the objections filed by respondent Nos.3 to 6 and the appeal preferred against his order was dismissed by the Tribunal, it was not open to the Recovery Officer to stay the delivery of the possession of the subject land to the writ petitioners (respondent Nos.1 and 2 herein). In the opinion of the learned Single Judge, mere pendency of the suit filed by respondent Nos.3 to 6 cannot be a ground for stalling the sale proceedings. She, accordingly, allowed the writ petition and quashed order dated 28.3.2007 passed by the Recovery Officer.

Shri U. Muralidhar Rao argued that the order under challenge is liable to be set aside because the reasons assigned by the learned Single Judge for quashing order dated 28.3.2007 passed by the Recovery Officer are legally unsustainable. Learned counsel strongly relied on Rule 11 (6) of the Second Schedule appended to the 1961 Act and Section 281 thereof and argued that orders dated

12.6.2003 and 13.12.2006 passed by the Recovery Officer and the Tribunal respectively are liable to be ignored because in terms of Rule 11 (6), the only remedy available to respondent Nos.1 and 2 was to file civil suit to establish their right over the subject land. Learned counsel submitted that the appellants are bona fide purchasers of the subject land and they cannot be deprived of the same on the pretext of execution of the preliminary and final decrees passed by III Additional Senior Civil Judge, City Civil Court, Secunderabad in O.S.No.1479 of 1985, order dated 12.4.2002 passed by the Tribunal in O.A.No.1343 of 1999 and Recovery Certificate dated 26.7.2002 issued by it for recovery of the amount due to the bank by disposing of immovable property mortgaged by respondent No.8. He submitted that in the face of the objections lodged by the appellants against the sale of the land belonging to respondent No.8, the only remedy available to respondent Nos.1 and 2 was to file civil suit and the Recovery Officer committed a serious illegality by issuing the warrant of possession. In support of his argument, Shri Muralidhar relied on the judgment of the Supreme Court in **Tax Recovery Officer II v. Gangadhar Vishwanath Ranade**[1].

Sarvasri G. Dhananjai, learned counsel appearing for respondent Nos.1 and 2 and Deepak Bhattacharjee, counsel for the bank argued that order dated 28.3.2007 passed by the Recovery Officer was gross abuse of the power vested in him and the learned Single Judge did not commit any error by setting aside the same. Shri Dhananjai submitted that if the appellants felt aggrieved by order dated 13.12.2006 passed by the Tribunal in R.A.No.7 of 2003, the

only remedy available to them was to file further appeal before the Tribunal and by having failed to do so, they disentitled themselves from questioning the warrant of possession issued by the Recovery Officer. Shri Deepak Bhattacharjee argued that the Recovery Officer committed grave illegality by issuing order dated 28.3.2007 ignoring the order passed by him on 12.3.2003 and the fact that the same had been confirmed by the Tribunal while dismissing R.A.No.7 of 2003 as also the fact that two I.As. filed by the appellants were dismissed by the competent civil court i.e. II Additional Senior Civil Judge, Ranga Reddy.

We have given our most anxious consideration to the entire matter. Before dealing with the arguments of the learned counsel, we deem it necessary to mention that in compliance of order dated 31.8.2007 passed by the Court, Shri Deepak Bhattacharjee, learned counsel for the bank, produced original sale-deed dated 2.2.1982 executed by Shri Peratla Sundaram in favour of respondent No.8 Smt.V. Ramadevi in respect of the subject land, which the latter deposited with the bank as security for repayment of the amount taken by respondent No.5 – M/s.Charimanar Fine Chemicals from the bank.

Admittedly, the suit for declaration and injunction filed by the appellants is pending adjudication in the court of II Additional Senior Civil Judge, Ranga Reddy. Therefore, we do not consider it proper to express any opinion on the merits or demerits of the case set up by the appellants, but we cannot refrain from expressing our surprise as to how Shri Kishore Kumar Jain could succeed in convincing the II Additional Senior Civil Judge, Ranga Reddy to pass a decree of

specific performance in his favour in respect of the subject land and also execute the registered sale-deed which allegedly enabled him to sell off the lands to appellant No.1 and his wife Smt.Prema Chandak despite the fact that the original title deed was and is in the custody of the bank. It is also not possible to appreciate as to how appellant No.1 could mortgage the subject land in favour of Chaitanya Co-operative Urban Bank Ltd. by deposit of title deed when the original document is still with the bank.

The argument of the learned counsel for the appellants that the preliminary and final decrees passed by III Additional Senior Civil Judge, City Civil Court, Secunderabad, order dated 12.4.2002 passed by the Tribunal in O.A.No.1343 of 1999 and the Recovery Certificate issued in favour of the bank should be ignored in view of the decree dated 26.6.1997 passed by II Additional Senior Civil Judge, Ranga Reddy in favour of Kishore Kumar Jain is wholly meritless. Though it may appear repetitive, we consider it necessary to mention that respondent No.8 had mortgaged the subject land to the bank by deposit of title deed on 30.8.1983, whereas the agreement of sale is shown to have been executed by her in favour of Kishore Kumar Jain on 10.2.1984. The suit filed by Shri Kishore Kumar Jain was decreed ex parte on 26.6.1997. This implies that the concerned court did not have the benefit of knowing the fact that the subject land was already mortgaged by respondent No.8 in favour of the bank. Therefore, the decree of specific performance passed in favour of Kishore Kumar Jain and consequential action taken for execution of sale-deed in his favour cannot adversely affect the bank's right to realize its dues in accordance with the preliminary and

final decrees passed by the III Additional Senior Civil Judge, City Civil Court, Secunderabad and order dated 12.4.2002 passed by the Tribunal. We may add that even if respondent No.8 had created mortgage in favour of the bank by deposit of title deed after entering into an agreement of sale with Kishore Kumar Jain, the same could not have affected the bank's right to recover its dues by sale of mortgaged property because the agreement of sale could not create a substantive right in favour of Kishore Kumar Jain.

The question which remains to be considered is whether, in view of the provisions contained in Section 281 of the 1961 Act and Rule 11 (6) of the Second Schedule appended thereto, execution of the Recovery Certificate dated 26.7.2002 issued by the Tribunal and sale of the subject land to respondent Nos.1 and 2 is required to be kept in abeyance and the only remedy available to them to secure possession of the subject land is to file civil suit. Section 281 of the 1961 Act and Rule 11(6) of the Second Schedule read as under:

Section 281 of the Income Tax Act, 1961

281. Certain transfers to be void:-

(1) Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise:

Provided that such charge or transfer shall not be void if it is made

(i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee ; or

(ii) with the previous permission of the Assessing Officer.

(2) This section applies to cases where the amount of tax or other sum

payable or likely to be payable exceeds five thousand rupees and the assets charged or transferred exceed ten thousand rupees in value.

Explanation: In this section, "assets" means land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee.

Rule 11 of the Second Schedule (Procedure for Recovery of Tax) appended to Income Tax Act, 1961

Investigation by Tax Recovery Officer.

11. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection :

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that

(*a*) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(*b*) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his

own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

A reading of the above reproduced provisions show that Section 281 comes into play only when the assessee creates a charge during the pendency of any proceedings under the Act or after completion thereof, but before the service of notice under Rule 2 of the Second Schedule. Rule 11 (1) postulates that the Tax Recovery Officer (the Recovery Officer herein) should investigate into any claim preferred to or any objection made to the attachment or sale of any property in execution of a certificate. Sub-rule (2) empowers the Recovery Officer to postpone the advertisement, if any issued for the sale of the property. Sub-rule (3) makes it mandatory for the claimant or objector to adduce evidence in support of his plea. Sub-rule (4) empowers the Recovery Officer to release the property from attachment or sale. Sub-rule (5) empowers the Recovery Officer to disallow the claim. Sub-rule (6) lays down that where a claim or objection is preferred, a party against whom an order is made can institute a suit in a civil court to establish his right to the property in

dispute.

The facts of the present case show that the appellants did lodge claim in respect of the subject land, but the same was unequivocally rejected by the Recovery Officer vide his order dated 12.6.2003 by assigning the following reasons:

"Shri Kishore Kumar Jain filed a suit for specific performance in OS No.248/96 and agreement of sale and ex parte orders were passed by the II Addl. Senior Civil Judge, R.R. Dist. On 26.6.97 against Smt. Rama Devi praying decree for registration of sale deed in respect of house bearing No.9-62, constructed on Plot No.12, admeasuring 288 sq. yards in Sy. Nos.193 to 197 situated at Kothapet Village, Hyderabad. Subsequently, the said Kishore Kumar Jain also filed E.P.No.29/99 the II Addl. Senior Civil Judge, R.R. Dist. executed the Regd. document No.674/99 and 9478/99 respectively. The original suit filed by the applicant bank in OS No.1479/85 on the file of III Additional Judge, Secunderabad against the defendants on 15.9.1985 and the preliminary decree was passed on 15.3.1988 and final decree was passed on 25.9.1991. Earlier the properties were mortgaged by Smt.Rama Devi, the 4th defendant in the original suit mortgaged to the applicant bank as one of the sureties in the year 1983. The said decrees were passed prior to execution of sale deed in favour of Shri Kishore Kumar Jain, which was registered on 19.8.99, every transaction subsequent to the mortgage is subject to the mortgage of the schedule property and hence the claimant has no right over the schedule property as the property was mortgaged earlier to the execution of sale deed in favour of the claimant."

The appeal preferred against the order of the Recovery Officer was dismissed by the Tribunal on 13.12.2006. The learned Presiding Officer noted the arguments of the learned counsel for the appellants and the judicial precedents on which he placed reliance and observed:

"… However, according to the latest legal position, the agreement of sale will not convey any right, title or interest in the property as far as the third parties are concerned and the decree was passed subsequently and

the sale deed was executed, by the Court after a long lapse of time after the mortgage was created and in these circumstances, the mortgage will take preference over the alleged sale said to have been executed on 10.2.1984. There are other decisions filed in respect of the creation of equitable mortgage to the effect that the mortgage is not required to be registered. However, those decisions are not applicable to the present facts of the case."

The appellants did not challenge the appellate order by filing further appeal before the Debts Recovery Appellate Tribunal, but filed suit for declaration (O.S.No.2952 of 2006). They also filed I.A.No.2766 of 2006 for stay of all further proceedings in O.A. No.1343 of 1999. The learned II Additional Senior Civil Judge, Ranga Reddy comprehensively considered the various issues raised by the appellants and dismissed the application, vide order dated 12.3.2007, paragraphs 20 and 25 of which read as under:

20. The petitioners are claiming several declarations in the main suit. The petitioners are even challenging the proceedings before the Debts Recovery Tribunal and also the auction conducted by the 10th respondent. There is no dispute regarding the fact that a civil suit for a declaration of title of the plaintiffs is maintainable, but the petitioners are not seeking the simple relief of declaration of their title, but they are challenging the proceedings of the Debts Recovery Tribunal. The said Debts Recovery Tribunal is not subordinating to this Court and so, in view of the decision of the Hon'ble Apex Court in Cotton Corporation Ltd., referred above, it is clear that this Court is precluded by the statutory provision i.e. Section 41 (b) of Specific Relief Act from granting the injunction restraining the Debts Recovery Tribunal from proceeding under O.A.No.1343 of 1999.

… … … …

25. So, considering all the circumstances, I am of the opinion that the petitioners have failed to establish their prima facie case and the balance of convenience is also not in favour of the petitioners and the petitioners will not suffer irreparable loss, if the relief of injunction as sought for by them is not granted. So in the circumstances, I hold that the petitioners are not

entitled for the relief of temporary injunction. So this point is answered against the petitioners and in favour of the respondents."

The second interlocutory application filed by the appellants (I.A.No.141 of 2007) for suspension of the sale certificate was also dismissed by the learned II Additional Senior Civil Judge, Ranga Reddy.

From what we have noted above, it is crystal clear that the appellants were very much cognizant of their status and right qua the subject land and this is the reason why they filed suit for declaration and applied for injunction. It is a different thing that they could not succeed in persuading II Additional Senior Civil Judge, Ranga Reddy to pass an order of injunction in their favour. They could have challenged the orders passed by the civil court by filing appeals, but, instead of adopting the legal remedy available to them, the appellants choose to circumvent the scheme of the two enactments and succeeded in persuading the Recovery Officer to pass most unusual order which had the effect of frustrating the sale certificate issued in favour of respondent Nos.1 and 2. In our considered opinion, order dated 28.3.2007 passed by the Recovery Officer was gross abuse of the power vested in him inasmuch as, he recalled the warrant of attachment ignoring the fact that the claim petition filed by the appellants had been dismissed by him and that order has been upheld by the Tribunal. Therefore, the learned Single Judge did not commit any error by quashing the patently illegal order passed by the Recovery Officer.

Before concluding we consider it proper to deal with the judgment of the Supreme Court in **Tax Recovery Officer II v.**

Gangadhar Vishwanath Ranade (supra). The facts of that case were that the assessee was carrying on the business as a partner of a firm known as the United Capital Construction Company, and also as a Contractor. For the assessment years 1962-63, 1963-64 and 1964-65 he was assessed to income tax. On 21.10.1972, the Tax Recovery Officer served notices on the assessee under Rule 2 of the Second Schedule to the 1961 Act. After two days, the residential houses of the assessee situated in Ramdaspeth, Nagpur was attached by the Tax Recovery Officer. The assessee filed objection petition stating therein that he had mortgaged the property in favour of the Bank of Maharashtra in 1967 for the purpose of raising the loan and that he had executed trust deed in favour of his wife and daughter. On 27.2.1969, the assessee conveyed the property to his wife and daughter by a registered deed, who then filed objections against the proposed attachment of the property by claiming that they are the owners of the property. The Bank of Maharashtra also filed independent objections. After conducting enquiry, the Income Tax Officer passed order dated 9.5.1974 whereby he declared that transfer of land by the assessee in favour of the wife and daughter was void against the department. By another order dated 17.9.1981 passed under Rule 11, the Recovery Officer declared that the mortgage dated 2.12.1967, the trust deed dated 21.2.1969 and the conveyance deed dated 27.2.1969 were illegal and void and that the said property was liable to attachment and sale.

The High Court of Bombay quashed the orders of the Tax Recovery Officer on the premise that he did not have the power to declare the transfer of land as void. The Supreme Court confirmed

the order of the High Court and held that the Tax Recovery Officer cannot declare a transfer of land as void.

The aforementioned judgment has no bearing on the present case because, what was challenged before the learned Single Judge was order dated 28.3.2007 passed by the Recovery Officer whereby he indirectly nullified order dated 12.6.2003 passed by his predecessor in office, which had been confirmed by the Tribunal. The learned Single Judge noted that the injunction applications filed by the petitioners had been dismissed and held that in the face of those orders, the Recovery Officer could not have recalled the warrant of possession.

No other point has been argued.

In the result, the appeal is dismissed. However, it is made clear that this judgment will not adversely affect the adjudication of the suit for declaration field by the appellants (O.S.No.2952 of 2006), which is pending in the court of II Additional Senior Civil Judge, Ranga Reddy District.

G.S. SINGHVI, CJ

September 13, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] (1998) 6 SCC 658